

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8064 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GELABHAI BHAGWANBHAI, DECEASED BY HIS HEIRS & L/R

Versus

STATE OF GUJARAT,

Appearance:

MR B.J.JADEJA, ADVOCATE for Petitioners

MR A.G.URAIZEE INSTRUCTED by PURNAND AND CO for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 04/04/96

ORAL JUDGEMENT

The petitioners have challenged the order passed by the Gujarat Revenue Tribunal in Revision Application No. 404 of 1991 decided on 1.4.6.1994 by filing this petition under Articles 226 and 227 of the Constitution of India.

The revisional authority allowed the revision partly. Except transfer in respect of survey number 276, mentioned in para 7 of the impugned judgment, rest of the transfers are held to be not legal and valid in view of provisions of the Urban Land (Ceiling and Regulation) Act, 1976 ('the ULC Act for short). The petitioners herein partly succeeded in respect of survey number 276 which is admeasuring 5 acres- 28 gunthas. That portion of the land was ordered to be excluded from holding of deceased Ghelabhai Bhagwanbhai. Consequently, surplus land declared by the authorities below would stand modified to that extent. The matter was, therefore, sent back to the Mamatdar and ALT to work out the net area to be declared surplus after giving an opportunity to the petitioners-land holders to exercise option regarding selection of surplus land to be surrendered and then further proceed to acquire the excess land.

A contention is raised that rest of the transfers also should have been considered and should not have been ignored by the Tribunal. In support of this submission, reliance is placed by the learned advocate for the petitioners on the decision of this court rendered in the case of Lajjashanker vs State, reported in 26(2) GLR 658.

The authorities below have concurrently and consistently held that rest of transfers are not legal and valid and that they are made to evade the liability from the provisions of the ULC Act. Except the transfer in respect of survey number 276 which is ordered to be excluded from the holding of Ghelabhai Bhagwanbhai, rest of the transfers are not effected by the registered sale deeds as required under law. Attention of this court was also invited by the learned Assistant Government Pleader that Ghelabhai Bhagwanbhai expired on 17.1.1979 and he had raised a loan of Rs. 67,000/- by mortgaging agricultural land bearing survey number 817 which is alleged to have been transferred to Dhanabhai Ramabhai. Parmabhai Bhagwanbhai is the brother of deceased Ghelabhai Bhagwanbhai. Having regard to the facts and circumstances, the contention that transfers by agreement to sell to four persons were fictitious and to evade provisions of the ULC Act has been accepted on facts and which also cannot be ruled out. Both the authorities have held against the petitioners. There is no other question of laws requiring interference of this court. The aforesaid decision relied upon by the petitioners is not helpful to them in view of the peculiar facts of the present case.

In light of the factual scenario emerging from the record of this court, this court has no hesitation in finding that the present petition is without any merit under Articles 226 and 227 of the Constitution of India wherein the jurisdictional scope is very much circumscribed.

In the result, this petition is dismissed. Rule is discharged. Having regard to the peculiar facts and circumstances of the case, there shall be no order as to costs. Interim relief shall obviously stand vacated.
